

MV 95-10

Tax Type: MOTOR VEHICLE USE TAX

Issue: Private Vehicle Use Tax, Business Reorg/Family Sale

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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XXXXXX

Taxpayer

versus

THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

)  
) Docket #  
) ID #s  
) NTL #s  
)  
) Claims for Credit  
)  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: The Illinois Department of Revenue (the "Department") issued two Notices of Department's Tentative Determination of Claim on November 9, 1992 to Taxpayer A and Taxpayer B (the "Taxpayer") denying claims in the amounts of \$151.88 and \$379.69 respectively. The taxpayer timely protested the Notices and requested a hearing. The hearing was held pursuant to that request and it is recommended that the decision of the Director of the Department be to uphold the two Notices of Department's Tentative Determination of Claim in their entirety.

FINDINGS OF FACT:

1. The Department's prima facie case was established by the admission into evidence of Dept. Ex. Nos. 1 through 6.

2. On November 3, 1992, the taxpayer filed a claim for refund for \$151.88, the amount which was paid pursuant to Vehicle Use Tax Deficiency No. XXXXX. The Department received the claim on November 9, 1992. (Dept. Ex. No. 1)

3. The deficiency was created when a 1988 Mercedes-Benz, titled in the name of Taxpayer B, was conveyed to Taxpayer A. (Dept. Ex. No. 1)

4. On November 3, 1992, the taxpayer filed a claim for refund for

\$379.69, the amount which the taxpayer paid pursuant to Vehicle Use Tax Deficiency No. XXXXX. The Department received the claim on November 9, 1992. (Dept. Ex. No. 2)

5. The deficiency was created when a 1991 Nissan was conveyed from Taxpayer A to Taxpayer B (Dept. Ex. No. 2)

6. The Department tentatively denied the Claims based upon the fact that a beneficial change of ownership had occurred. (Dept. Ex. No. 3)

7. The President, sole director and stockholder of Taxpayer B is Taxpayer A. The trustees of Taxpayer B are Taxpayer A. (Taxpayer's Post-Hearing Ex. No. 1)

CONCLUSIONS OF LAW: The Illinois Constitution provides for the imposition of the Retailers Occupation Tax and related taxes pursuant to Article IX Sections one and two of the Illinois Constitution of 1970. They state:

1. State Revenue Power

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

2. Non-Property Taxes-Classification, Exemptions, Deductions, Allowances and Credits

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

Pursuant to the authority granted by the Constitution, the Illinois Legislature has promulgated laws concerning the use of a motor vehicle in the state of Illinois. In particular 625 ILCS 5/3-1001 states:

A tax is hereby imposed on the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of this Code acquired by purchase, and having a year model designation preceding the year of application for title by 5 or fewer years prior to October 1, 1985 and 10 or fewer years on and after October 1, 1985 and prior to January 1, 1988. On and after January 1, 1988, the tax shall apply to all motor vehicles without regard to model year. Except that the tax shall not

apply...

Prior to January 1, 1988, the rate of tax shall be 5% of the selling price for each purchase of a motor vehicle covered by Section 3-1001 of this Code. Except as hereinafter provided, beginning January 1, 1988, the rate of tax shall be as follows for transactions in which the selling price of the motor vehicle is less than \$15,000:

Number of Years Transpired After Model Year of Motor Vehicle	Applicable Tax
1 or less	\$390
2	290
3	215
4	165...

For the following transactions, the tax rate shall be \$15 for each motor vehicle acquired in such transaction:...

- (iii) when a motor vehicle which has once been subjected to the Illinois retailers' occupation tax or use tax is transferred in connection with the organization, reorganization, dissolution or partial liquidation of an incorporated or unincorporated business wherein the beneficial ownership is not changed.

Section 3.4 of the Professional Service Corporation Act (805 ILCS 10/3.4) defines a Professional Corporation. It states:

- (i) "Professional Corporation" means a corporation organized under this Act solely for the purpose of rendering one category of professional service or related professional services and which has as its shareholders, directors, officers, agents and employees (other than ancillary personnel) only individuals who are duly licensed by this State or by the...

Section 15 of the same act (805 ILCS 10/15) concerns the nature of corporate activities and states:

No person who is not licensed in that category of professional service or related professional services shall have any part in the ownership, management or control of the corporation, nor may any proxy to vote any shares of such corporation be given to a person who is not so licensed.

The Illinois Supreme Court has stated:

It is a well-established principle that a corporation is separate and distinct as a legal entity from its shareholders, directors and officers and, generally, from other corporations with which it may be affiliated. *Maine Bank of Chicago v. Baker*, 86 Ill.2d 188 at 204 (1981).

In the present case, the Mercedes-Benz was first registered in the taxpayer's corporate name and the Nissan was first registered to the husband and wife. The law recognizes that a professional corporation is a distinct legal entity and affords that entity certain responsibilities and privileges, one of which is ownership in the corporate name. *Maine Bank, Bevelheimer v. Gierach*, 33 Ill.App.3d. 988 (1975), *Sabath v. Mansfield*, 60 Ill.App.3d 1008 (1978).

In *Earp v. Schmitz*, 334 Ill.App. 382 (1948), the First District Appellate Court held that a corporation is a distinct entity and that a sole shareholder was not the owner of corporate property.

Regarding Vehicle Use Tax, the Illinois statutes state that when there is a conveyance of an automobile and there is a change in the beneficial ownership of the vehicle, a tax shall be imposed based upon the model year of the vehicle. If there is no change in the beneficial ownership when the vehicle is conveyed, a tax of \$15.00 is imposed.

The taxpayer's argument, that there was no beneficial change of ownership when the automobiles were conveyed from the corporation to the husband and wife and from the husband and wife to the corporation, is not persuasive. Registration and title of a vehicle are not transferable from one individual, firm or corporation to another. Any transfer between separate legal entities is considered a change in ownership and requires a new registration and title. The husband and wife couple of Taxpayer A is not the same legal entity as Taxpayer B

When these automobiles were transferred from the couple to the corporation and from the corporation to the couple, there was a change in beneficial ownership. The conveyance also did not occur in connection with any reorganization, organization, dissolution or partial liquidation of a business, as is needed before the lesser tax can be imposed. Because the transactions do not meet the requirements for the imposition of the lesser

tax, the vehicle use tax was properly assessed and paid pursuant to the vehicle use tax deficiency notices.

I therefore recommend that the Director of the Department uphold the Notice of Department's Tentative Determination of Claim number XXXXX and the Notice of Department's Tentative Determination of Claim number XXXXX in their entirety.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge

September 20, 1995